

REMARKS/ARGUMENTS

Before this Amendment, claims 1, 3-12 were present for examination. Claims 2 and 13-20 were canceled in a prior amendment. Therefore, Claims 1 and 3-12 are present for examination. Applicant respectfully requests reconsideration of this application.

The office action mailed on November 9, 2006 argued that the Anderson reference inherently taught a random time interval generator. Applicant's attorney respectfully traverses this argument. The principle of inherency under 35 USC §102 is a very limited principle that requires that a reference must necessarily teach an element without exception. This is a longstanding principle articulated in numerous cases before the Court of Appeals for the Federal Circuit and also noted by the MPEP. For example, the Manual of Patent Examining Procedure, Original Eighth Edition, Revised May 2004 states in section 2112 at pages 2100-54 through 2100-55:

"The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is

not sufficient." In re Robertson, 169 F. 3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). . . .

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)."

See Manual of Patent Examining Procedure, Original Eighth Edition, Revised May 2004 states in section 2112 at pages 2100-54 through 2100-55 (emphasis in the original).

As noted above, the Anderson reference does not necessarily dictate that time intervals will be varied between correction signals. Thus, Anderson does not inherently teach that time intervals will be varied. Rather, time intervals between application of the correction signal in Anderson could still be at regular predetermined intervals -- only the side of the animal to which the correction signals is applied would be random. Thus, Anderson does not inherently teach the claim element "a random time interval generator coupled with said correction signal generator and wherein said second sequence of correction signals is applied in response to said random time interval generator".

Since the Anderson reference does not teach each and every element of claim 1, the final office action and the advisory action have failed to establish a prima facie case of anticipation under 35 USC §102. Therefore, claim 1 is in condition for allowance. Furthermore, since claims 3-12 depend from claim 1, those claims are also in condition for allowance.

Appl. No. 10/830,174
Amdt. dated April 9, 2007
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 3643

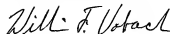
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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